

I.	REAL PARTY IN INTEREST	2
II.	RELATED APPEALS AND INTERFERENCES	2
III.	STATUS OF CLAIMS AND SPECIFICATION	3
IV.	STATUS OF AMENDMENTS	3
V.	SUMMARY OF CLAIMED SUBJECT MATTER	3
VI.	GROUND OF REJECTIONS TO BE REVIEWED ON APPEAL	6
VII.	THE ARGUMENT	7
VIII.	CONCLUSION	16
IX.	CLAIMS APPENDIX	18
X.	EVIDENCE APPENDIX	25
XI.	RELATED PROCEEDINGS INDEX	26

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In reapplication of	:	Customer Number: 60033
	:	
Gupta et al.	:	Confirmation No.: 5648
	:	
Application No. 10/700,431	:	Group Art Unit: 2191
	:	
Filed: 11-4-03	:	Examiner: Ted Vo

For: FACILITATION OF MULTI-PROJECT MANAGEMENT USING CRITICAL
CHAIN METHODOLOGY

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed herewith, wherein Appellant appeals from the Examiner's rejection of claims 1-20 and the Examiner's objection to the specification.

I. REAL PARTY IN INTEREST

This application is assigned to Realization Technologies, Inc. by assignment recorded on 5-28-2004 at Reel 014667, Frame 0460.

II. RELATED APPEALS AND INTERFERENCES

Applicant is unaware of any related appeals and interferences.

III. STATUS OF CLAIMS AND SPECIFICATION

Claims 1-20 are pending in this application and have been rejected three times by the Examiner. The Examiner has objected to the specification three times. It is from the multiple rejections of claims 1-20 and the multiple objections to the specification that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Final Office Action dated 7-2-07. Thus, the current status of the claims is as presented in the First Amendment dated 4-5-07.

After the Final Office Action dated 7-2-07, Appellant submitted an Amendment After Final dated 10-02-07 amending the specification, which amendment was entered by the Examiner on 11-27-07. The Amendment After Final was in compliance with 37 C.F.R. section 1.116. Thus, the current status of the specification is as presented in the Amendment After Final dated 10-02-07.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a method on a computer for providing critical chain-based project management across a plurality of projects. (See lines 1-4 of ¶ 16 and lines 1-3 of ¶ 17 of Appellant's disclosure.) The method includes generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task. (See lines 1-5 of ¶ 18.) The method further includes generating buffers for each of the plurality of

projects, wherein at least one of the buffers generated is placed on the critical chain, and reconciling project resources among the plurality of projects so as to accommodate the critical chain. (See lines 5-6 of ¶ 18, lines 1-11 of ¶ 64 and lines 1-3 of ¶ 76.) The method further includes executing the plurality of project plans, including continuously providing status information about the buffers to a user and allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers. (See lines 7-10 of ¶ 18, lines 1-6 of ¶ 51 and lines 1-12 of ¶ 83.)

Independent claim 5 is directed to a method on a computer for providing critical chain-based project management across a plurality of projects. (See lines 1-4 of ¶ 16 and lines 1-3 of ¶ 17 of Appellant's disclosure.) The method includes generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task. (See lines 1-5 of ¶ 18.) The method further includes generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain, and reconciling project resources among the plurality of projects so as to accommodate the critical chain. (See lines 5-6 of ¶ 18, lines 1-11 of ¶ 64 and lines 1-3 of ¶ 76.) The method further includes executing the plurality of project plans, including continuously providing status information about the buffers to a user and allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers. (See lines 7-10 of ¶ 18, lines 1-6 of ¶ 51 and lines 1-12 of ¶ 83.) The method further includes continuously modifying task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects. (See lines 10-12 of ¶ 18, lines 1-4 of ¶ 19, lines 12-13 of ¶ 20, and lines 1-6 of ¶ 76.)

Independent claim 9 is directed to a server for providing critical chain-based project management across a plurality of projects. (See lines 1-3 of ¶ 20 and item 102 of FIG. 1.) The server includes a memory storage device including computer instructions for generating a plurality of project plans having a critical chain, each of the plurality of project

plans corresponding to one of the plurality of projects, wherein a project comprises at least one task. (See items 206, 212 of FIG. 2, lines 3-5 of ¶ 21.) The computer instructions further include instructions for generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain, and reconciling project resources among the plurality of projects so as to accommodate the critical chain. (See lines 5-7 of ¶ 21, lines 1-11 of ¶ 64 and lines 1-3 of ¶ 76.) The computer instructions further include instructions for executing the plurality of project plans, including continuously providing status information about the buffers to a user and providing an interface for allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers. (See lines 7-13 ¶ 21 and lines 1-6 of ¶ 76.)

Independent claim 13 is directed to a server for providing critical chain-based project management across a plurality of projects. (See lines 1-3 of ¶ 20 and item 102 of FIG. 1.) The server includes a memory storage device including computer instructions for generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task. (See items 206, 212 of FIG. 2, lines 3-5 of ¶ 21.) The computer instructions further include instructions for generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain, and reconciling project resources among the plurality of projects so as to accommodate the critical chain. (See lines 5-7 of ¶ 21, lines 1-11 of ¶ 64 and lines 1-3 of ¶ 76.) The computer instructions further include instructions for executing the plurality of project plans, including continuously providing status information about the buffers to a user and allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers. (See lines 7-13 ¶ 21 and lines 1-6 of ¶ 76.) The computer instructions further include instructions for continuously modifying task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects. (See lines 10-12 of ¶ 18, lines 1-4 of ¶ 19, lines 12-13 of ¶ 20, lines 13-15 of ¶ 21 and lines 1-6 of ¶ 76.)

Independent claim 17 is directed to a memory storage device including computer instructions for providing critical chain-based project management across a plurality of projects. (See lines 1-3 of ¶ 20 and item 102 of FIG. 1.) The computer instructions include computer instructions for generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task. (See items 206, 212 of FIG. 2, lines 3-5 of ¶ 21.) The computer instructions further include instructions for generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain, and reconciling project resources among the plurality of projects so as to accommodate the critical chain. (See lines 5-7 of ¶ 21, lines 1-11 of ¶ 64 and lines 1-3 of ¶ 76.) The computer instructions further include instructions for executing the plurality of project plans, including continuously providing status information about the buffers to a user and providing an interface to the user for allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers. (See lines 7-13 ¶ 21 and lines 1-6 of ¶ 76.) The computer instructions further include instructions for continuously modifying task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects. (See lines 10-12 of ¶ 18, lines 1-4 of ¶ 19, lines 12-13 of ¶ 20, lines 13-15 of ¶ 21 and lines 1-6 of ¶ 76.)

VI. GROUNDS OF REJECTIONS TO BE REVIEWED ON APPEAL

1. The specification has been objected to on the ground of newly added subject matter.
2. Claims 1-20 have been rejected under 35 U.S.C. section 112, first paragraph for lacking a specific asserted utility or a well established utility.
3. Claims 1-20 have been rejected under 35 U.S.C. section 112, second paragraph as

being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 1-20 have been rejected under 35 U.S.C. section 101 as being directed to non-statutory subject matter.

5. Claims 1-20 have been rejected under 35 U.S.C. section 102(b) as being anticipated by Microsoft Solution Framework, "MSF Project Management Discipline", v 1.1.

VII. THE ARGUMENT

1. THE SPECIFICATION IS OBJECTED TO ON THE GROUND OF NEWLY ADDED SUBJECT MATTER

In Appellant's First Amendment dated 4-5-07, paragraphs 18, 19, 20, 21, 51, 52, 62, 73, 74, 79, 82, 96 and 98 of the specification were amended.

On p. 2 of the Final Office Action dated 7-2-07, the Examiner objected to the specification on the grounds that the First Amendment dated 4-5-07 added new matter to the specification.

In Appellant's Amendment After Final dated 10-2-07, paragraphs 18, 19, 20 and 21 were amended back to their original state in compliance with 37 C.F.R. section 1.116. Paragraphs 51, 52, 62, 73, 74, 79, 82, 96 and 98 remained as amended in Appellant's First Amendment dated 4-5-07.

In the three-line Advisory Action of 10-31-07, the Examiner begins by stating the following cryptic assertion: "the amendment to the specification fails to comply with 1.116 Amendments and Affidavits or other evidence after final action and prior to appeal." In making this assertion, the Examiner fails to explain or give any reason for why the aforementioned amendment does not comply with 37 C.F.R. section 1.116. Without being provided such a reason or explanation, Appellant cannot adequately respond to the Examiner's assertion. Nevertheless, Appellant respectfully asserts that the Amendment of

10-2-07 complied with 37 C.F.R. section 1.116 (b)(1), which states that “After a final rejection . . . in an application . . . , but before or on the same date of filing an appeal . . . an amendment may be made . . . complying with any requirement of form expressly set forth in a previous Office action.” Appellant’s Amendment After Final dated 10-2-07 was an attempt to comply with a requirement (specifically, the objection to the specification) of the Final Office Action dated 7-2-07.

Further in the Advisory Action of 10-31-07, the Examiner goes on to ambiguously state in syntactically incorrect language “the specification is amended for the purpose to offset the rejection in the final office action, rather it is amended for the purpose to put the application in the better form for appeal.” It is unknown what was meant by this statement. Even more unintelligibly, the Examiner concludes the three-line Advisory Action by stating that “the specification is also added with new texts to the paragraph [0021].” Since the Applicant amended paragraph 21 back to its original state in the Amendment of 10-2-07, the Examiner’s latter statement, if understood correctly, is erroneous.

On 11-27-07, the Examiner placed a handwritten note on a copy of Appellant’s Amendment After Final (dated 10-02-07) in the file wrapper of Application No. 10/700,431 instructing the Legal Instrument Examiner to “Please enter the Amendment filed 10/02/07.” Thus, Appellant’s Amendment After Final dated 10-02-07 was entered into the record of the file wrapper of Application No. 10/700,431 on 11-27-07.

In the Advisory Action of 11-27-07, the Examiner ambiguously states, again in syntactically and grammatically incorrect English, “Applicant’s request for entering the amendment to the specification, where the amendment is to delete the amendment to the specification file previously.” Even more unintelligibly, the Examiner concludes on the issue of the specification by stating “the arguments have been considered but they are not place the Applicants into the condition for allowance.” It is unknown to which “arguments” the Examiner refers and it is unclear why he mentions conditions for allowance when referring to an objection to the specification. Again, Appellant cannot be expected to reply to such a vague assertion without being given a reason as to why the Examiner objects to the specification.

Nevertheless, Appellant respectfully asserts that the specification does not contain

new matter that was submitted after the date of filing. To recap, in Appellant's First Amendment dated 4-5-07, paragraphs 18, 19, 20, 21, 51, 52, 62, 73, 74, 79, 82, 96 and 98 of the specification were amended. Subsequently, in Appellant's Amendment After Final dated 10-2-07, paragraphs 18, 19, 20 and 21 were amended back to their original state. Thus, currently only paragraphs 51, 52, 62, 73, 74, 79, 82, 96 and 98 are amended over the original specification. Applicant asserts that paragraphs 51, 52, 62, 73, 74, 79, 82, 96 and 98 were amended only to cure typographical errors and obvious errors. As stated in MPEP section 2163.07, an amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction. *In re Odd*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971).

Following is a description of the amendments to paragraphs 51, 52, 62, 73, 74, 79, 82, 96 and 98 of the specification executed in Appellant's First Amendment dated 4-5-07:

- Paragraph 51: Twice, number "212" was corrected to number "210."
- Paragraph 52: Twice, number "212" was corrected to number "210."
- Paragraph 62: The word "manger" was corrected to the word "manager" and the word "a" was added.
- Paragraph 73: The word "configures" was corrected to the word "configured."
- Paragraph 74: The word "manger" was corrected to the word "manager."
- Paragraph 79: A missing period was added.
- Paragraph 82: The phrase "task updating module 218" was corrected to the phrase "reports module 220" and the word "chart" was corrected to the word "charts."
- Paragraph 96: The word "red" was corrected to the word "green."
- Paragraph 98: The word "manger" was corrected to the word "manager."

Therefore, paragraphs 51, 52, 62, 73, 74, 79, 82, 96 and 98 of the specification were amended only to cure obvious errors, as described in MPEP section 2163.07, and therefore do not contain new matter. For the reasons stated above, Appellant respectfully requests that Honorable Board reverse this objection to the specification.

2. THE REJECTION OF CLAIMS 1-20 35 U.S.C. SECTION 112, FIRST PARAGRAPH FOR LACKING A SPECIFIC ASSERTED UTILITY OR A WELL ESTABLISHED UTILITY.

For the convenience of the Honorable board in addressing this rejection, claims 2-20 stand or fall together with claim 1.

On p. 3 lines 5-7 of the Final Office Action dated 7-2-07, the Examiner rejects claims 1-20 under 35 U.S.C. section 112, first paragraph and makes the vexatious statement: "since the claimed invention is not supported by either a specific asserted utility or a well established utility for the reasons set forth above, one skilled in the art would not know how to use the claimed invention." The Examiner, however, does not provide any "reasons set forth above" and provides no explanation as to why the claimed invention lacks patentable utility, as required in MPEP section 706.03(a), subsection II, Examiner's Note for paragraph 7.05.04. Again, Appellant cannot be expected to reply to such a vague assertion without being provided a reason as to why the Examiner believes the invention lacks utility. Nevertheless, Appellant respectfully asserts that the claimed invention includes the utility required under 35 U.S.C. section 101. Specifically, all independent claims 1, 5, 9, 13, 17 explicitly state the utility "for providing critical chain-based project management across a plurality of projects." For the reasons stated above, Appellant respectfully requests that Honorable Board reverse this rejection of claims 1-20.

The Examiner does not mention a rejection of claims 1-20 under 35 U.S.C. section 112, first paragraph in the Advisory Action dated 10-31-07.

In lines 5-10 of the Examiner's half-page Advisory Action dated 11-27-07, however, the Examiner states

"various new subject matters are added in the claims. For example, wherein at least one of the buffers generated is placed on the critical chain, so as to accommodate the critical chain, continuously providing status information about the buffers to a user, allowing the user to manage the buffers across a plurality of projects based on the status information about the buffers, etc. It should be noted that these new claimed subject matters are in the claims and there is no support for these limitations in the claims."

As best as can be discerned, the Examiner's poorly worded paragraph above is an attempt to assert that the above-identified claim elements do not have support in the

specification. In response, Appellant describes below the support for each of the above-identified claim elements in the specification. Claim element “wherein at least one of the buffers generated is placed on the critical chain” finds support in paragraphs 64, 76, and 83-87 of the original specification. Claim element “continuously providing status information about the buffers to a user” finds support in paragraphs 83-89 of the original specification. Claim element “allowing the user to manage the buffers across a plurality of projects based on the status information about the buffers” finds support in paragraphs 50-52, 64 and 83-85 of the original specification.

For the reasons stated above, Appellant respectfully requests that Honorable Board reverse this rejection of the claims.

3. THE REJECTION OF CLAIMS 1-20 UNDER 35 U.S.C. SECTION 112, SECOND PARAGRAPH AS BEING INDEFINITE FOR FAILING TO PARTICULARLY POINT OUT AND DISTINCTLY CLAIM THE SUBJECT MATTER WHICH APPLICANT REGARDS AS THE INVENTION

For the convenience of the Honorable board in addressing this rejection, claims 2-20 stand or fall together with claim 1.

On p. 3 lines 11-16 of the Final Office Action dated 7-2-07, the Examiner rejects claims 1-20 under 35 U.S.C. section 112, second paragraph and makes the following grammatically incorrect statement: “claims are based on newly added limitations that are not supported by the original disclosure. It is unclear what subject matters in which the Applicants regard as the invention. Since the newly added limitations in the claims 1-20, for example, limitations are marked, these amended claims fail to be sufficient antecedent basis in the specification.” As best as the Examiner’s statement can be understood, the Examiner is asserting a rejection of claims 1-20 under 35 U.S.C. section 112, second paragraph because he regards the amendment to the claims in the First Amendment 4-5-07 as new matter.

The Examiner does not mention a rejection of claims 1-20 under 35 U.S.C. section 112, second paragraph in either the Advisory Action dated 10-31-07 or the Advisory Action

dated 11-27-07. The issue of new matter is discussed and argued by Appellant above in section "1. The Specification is . . .," section "2. The Rejection of Claims 1-20 . . ." and the paragraph above.

For the reasons stated above, Appellant respectfully requests that Honorable Board reverse this rejection of the claims.

4. THE REJECTION OF CLAIMS 1-20 UNDER 35 U.S.C. SECTION 101 AS BEING DIRECTED TO NON-STATUTORY SUBJECT MATTER

For the convenience of the Honorable board in addressing this rejection, claims 2-20 stand or fall together with claim 1.

On p. 4 lines 1-4 of the Final Office Action dated 7-2-07, the Examiner rejects claims 1-20 under 35 U.S.C. section 101 and makes the following uncharacteristically coherent statement: "claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As per claims 1-20 are rejected under 101 because the claims are not supported by either a specific asserted utility or a well established utility. The claims are merely based on newly added subject matters."

With regard to the Examiner's statement regarding utility, again, Appellant cannot be expected to reply to such a vague assertion without being provided a reason as to why the Examiner believes the invention lacks utility. Nevertheless, Appellant respectfully asserts that the claimed invention includes the utility required under 35 U.S.C. section 101. Specifically, all independent claims 1, 5, 9, 13, 17 explicitly state the utility "for providing critical chain-based project management across a plurality of projects." With regard to the Examiner's statement regarding new matter, this issue is discussed and argued by Appellant above in section "1. The Specification is . . .," section "2. The Rejection of Claims 1-20 . . ." and section "3. The Rejection of Claims 1-20 . . ."

The Examiner does not mention a rejection of claims 1-20 under 35 U.S.C. section 101 in the Advisory Action dated 10-31-07. In the Advisory Action dated 11-27-07, the Examiner states:

“various new subject matters are added in the claims. For example, wherein at least one of the buffers generated is placed on the critical chain, so as to accommodate the critical chain, continuously providing status information about the buffers to a user, allowing the user to manage the buffers across a plurality of projects based on the status information about the buffers, etc. It should be noted that these new claimed subject matters are in the claims and there is no support for these limitations in the claims.”

The Examiner’s statements above are addressed by Appellant above in section “2. The Rejection of Claims 1-20 . . .” For the reasons stated above, Appellant respectfully requests that Honorable Board reverse this rejection of claims 1-20.

5. THE REJECTION OF CLAIMS 1-20 HAVE BEEN REJECTED UNDER 35 U.S.C. SECTION 102(B) AS BEING ANTICIPATED BY THE MICROSOFT SOLUTION FRAMEWORK REFERENCE

For the convenience of the Honorable board in addressing this rejection, claims 2-20 stand or fall together with claim 1.

On pages 4-6 of the Final Office Action dated 7-2-07, the Examiner rejected claims 1-20 under 35 U.S.C. § 102(b) as being anticipated by Microsoft Solution Framework, “MSF Project Management Discipline”, v 1.1 (“MSF” hereinafter”).

Exemplary claim 1 recites as follows:

1. A method on a computer for providing critical chain-based project management across a plurality of projects, comprising:
 - generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task;
 - generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain;
 - reconciling project resources among the plurality of projects so as to accommodate the critical chain;
 - executing the plurality of project plans;
 - continuously providing status information about the buffers to a user; and
 - allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers.

The Examiner argues in the Final Office Action dated 7-2-07 that the claim element “critical chain,” used multiple times in each independent claim, is found in MSF on p. 30

wherein the words “critical path” are found. In project management, a “critical path” is defined to be the “longest chain of tasks/events that should be managed in order to maintain time and budget goals.” See para. 5 of Appellant’s specification. In project management, the “critical chain” is the sequence of both precedence-dependent and resource-dependent terminal elements that prevent a project from being completed in a shorter time, given finite resources. Thus, “a critical chain” takes resources into greater account than a “critical path.”

The terms “critical chain” and “critical path” are well known terms of art and were well known at the time of filing of the patent application. The concept of a “critical chain” has been the subject of numerous books, articles, textbooks, scholarly journals and university courses dating before the time of filing of this patent application, namely, the book *Critical Chain*, by Eliyahu M. Goldratt, published by North River Press in 1997, and the book *Critical Chain Project Management*, by Lawrence P. Leach, published by Artech House Publishing in 2000. The concept of a “critical path” is even more well known, as it was first introduced in the 1950s and at the time of filing this patent application was the most commonly used form of project management.

The very title of Appellant’s specification includes the term critical chain and the entire invention revolves around the use of critical chains instead of critical paths. As Appellant argued in the First Amendment of 4-5-07 and the Amendment After Final of 10-2-07, the use of critical chains is described, among other places, in paragraph [0010] of Appellant’s specification, reproduced in relevant part below:

[0010] A new approach to project management, the critical chain project management methodology, offers a solution to manage uncertainties in a single project environment, where resources are dedicated to individual projects. A key component to this approach suggests putting blocks of unscheduled time, called buffers, at key integration points in project plans to absorb the shocks of uncertainties. Another key component of the critical chain project management methodology suggests that buffers are managed during execution to ensure the project meets established time goals. A description of the critical chain-based project management method was first published in *Critical Chain*, by Eliyahu M. Goldratt, North River Press 1997.

The use of critical chains is fundamental to and inextricable from the claimed process, as described, among other places, in paragraphs [0041]-[0042] of Applicant’s

specification, reproduced in relevant part below:

[0041] The present invention, according to a preferred embodiment, overcomes problems with the prior art by providing multi-project buffer management for an efficient and easy-to-implement multi-project management system utilizing the critical chain methodology.

[0042] . . . Another advantage of the present invention is the calculation of task priorities among multiple projects. Implementing the critical chain project management methodology in a multi-project environment requires multi-project buffer management. Thus, the present invention provides multi-project buffer management in order to provide task priorities across multiple projects. The calculation of task priorities across multiple projects allows managers to assign resources based on the overall need of all projects. (Emphasis Added)

The MSF reference does not disclose anything related to a critical chain or the critical chain methodology of project management. Although the Examiner states that critical chain is disclosed in the MSF reference, a review of the MSF reference reveals that there isn't even a mention of the words "critical chain" in the entire reference. The MSF reference does not disclose in any way the critical chain or the critical chain methodology. The MSF reference is directed solely to critical path implementations. As explained above, a critical chain is patentably distinct from a critical path.

Accordingly, the Examiner has failed to establish that the applied art teaches all of the claimed features. Specifically, the Examiner's analysis ignores "critical chain" as claimed. Thus, as it will be clear to the Honorable Board, MSF fails as a reference to anticipate the claimed invention.

The Examiner does not mention a rejection of claims 1-20 under 35 U.S.C. section 102(b) in the Advisory Action dated 10-31-07. On line 14 of the half-page Advisory Action dated 11-27-07, however, the Examiner provides a first assertion when he states "the new limitation 'critical chain' recited in the context of the claims is identified as newly added subject matter." The Examiner could not be more wrong. The term "critical chain" is found forty-three (43) times in Appellant's original specification filed in 2003. Additionally, as explained above, the Appellant provides voluminous explanations of "critical chain" in the specification. To assert that the concept of a "critical chain" is new matter shows the lack of attention the Examiner is providing to his duties.

On line 15 of the Advisory Action dated 11-27-07 the Examiner provides a second

assertion when he states that the Appellant has not provided an indication of novelty as required by 37 C.F.R. 1.111(c), which provides that an Applicant must “clearly point out the patentable novelty which he or she thinks the claims present.” In response to this assertion, Appellant directs the Honorable Board to the arguments of novelty provided above in section “5. Rejection of Claim” which were originally argued in the First Amendment of 4-5-07 and the Amendment After Final of 10-2-07.

On line 16 of the Advisory Action dated 11-27-07 the Examiner provides a third assertion when he states that the MSF reference is “clearly addressing ‘critical chain’” and goes on to recite the following passage from MSF, “The critical path is the longest chain of” Again, the Examiner has completely ignored the patentable difference between critical chain and critical path and has ignored “critical chain” as claimed. For the reasons stated above, Appellant respectfully requests that Honorable Board reverse this rejection of the claims.

VIII. CONCLUSION

Based upon the foregoing, Appellants respectfully submit that the Examiner’s rejections under 35 U.S.C. sections 101 and 112, first and second paragraph, and the Examiner’s objection to the specification fail for lack of proper application. Further, Appellants respectfully submit that the Examiner’s rejections under 35 U.S.C. section 102(b) fail for the deficiencies of the MSF reference. Appellants therefore solicit the Honorable Board to reverse the Examiner’s rejections under 35 U.S.C. sections 101, 112, first and second paragraph and 102(b) and reverse the Examiner’s objection to the specification.

To the extent necessary, a petition for extension of time under 37 C.F.R. section 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper including extension of time fees to Deposit Account 12-2158, and please credit excess fees to such deposit account.

Date: Feb. 22, 2008

Respectfully submitted,

/Mark Terry/

Mark Terry

Attorney Registration No. 47,133

Customer # 60033

Carey Rodriguez Greenberg & Paul LLP

950 Peninsula Corporate Circle, Suite 3020

Boca Raton, FL 33487

Tel: 561-92-3845

Fax: 561-244-1062

IX. CLAIMS APPENDIX

1. A method on a computer for providing critical chain-based project management across a plurality of projects, comprising:

generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task;

generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain;

reconciling project resources among the plurality of projects so as to accommodate the critical chain;

executing the plurality of project plans;

continuously providing status information about the buffers to a user; and

allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers.

2. The method of claim 1, wherein the step of continuously providing further comprises:

continuously providing status information about the buffers to a user via a network interface.

3. The method of claim 2, further comprising:

continuously modifying task prioritization for any task of the plurality of projects

based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects.

4. The method of claim 3, further comprising:

providing to the user, over a network interface, the task prioritization that was modified based on the status information about the buffers.

5. A method on a computer for providing critical chain-based project management across a plurality of projects, comprising:

generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task;

generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain;

reconciling project resources among the plurality of projects so as to accommodate the critical chain;

executing the plurality of project plans;

continuously providing status information about the buffers to a user;

allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers; and

continuously modifying task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects.

6. The method of claim 5, wherein the step of continuously providing further comprises:

continuously providing status information about the buffers to a user via a network interface.

7. The method of claim 6, wherein the step of allowing further comprises:

allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers, wherein the user utilizes a web page to manage the buffers.

8. The method of claim 7, further comprising:

providing to the user, over a network interface, the task prioritization that was modified based on the status information about the buffers.

9. A server for providing critical chain-based project management across a plurality of projects, the server comprising a memory storage device including computers instructions for:

generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task;

generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain;

reconciling project resources among the plurality of projects so as to accommodate

the critical chain;

executing the plurality of project plans;

continuously providing status information about the buffers to a user; and

providing the user with an interface for allowing the user to manage the buffers

across the plurality of projects based on the status information about the buffers.

10. The server of claim 9, wherein the instructions for continuously providing further comprise instructions for:

continuously providing status information about the buffers to the user via a network interface.

11. The server of claim 10, further comprising computer instructions for:
continuously modifying task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects.

12. The server of claim 11, wherein each interface is provided over a network, such as a WAN.

13. A server for providing critical chain-based project management across a plurality of projects, the server comprising a memory storage device including computers instructions for:

generating a plurality of project plans having a critical chain, each of the plurality of

project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task;

generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain;

reconciling project resources among the plurality of projects so as to accommodate the critical chain;

executing the plurality of project plans;
continuously providing status information about the buffers to a user;

allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers; and

continuously modifying task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects.

14. The server of claim 13, wherein the instructions for allowing further comprise instructions for:

providing an interface to the user that allows the user to manage the buffers across the plurality of projects based on the status information about the buffers.

15. The server of claim 14, wherein the interface further provides to the user information associated with buffers for the plurality of projects, so as to evaluate the status of the plurality of projects.

16. The server of claim 15, wherein the interface is provided over a network, such as a WAN.

17. A memory storage device including computer instructions for providing critical chain-based project management across a plurality of projects, the computer instructions including instructions for:

generating a plurality of project plans having a critical chain, each of the plurality of project plans corresponding to one of the plurality of projects, wherein a project comprises at least one task;

generating buffers for each of the plurality of projects, wherein at least one of the buffers generated is placed on the critical chain;

reconciling project resources among the plurality of projects so as to accommodate the critical chain;

executing the plurality of project plans;
continuously providing status information about the buffers to a user;

providing an interface to the user for allowing the user to manage the buffers across the plurality of projects based on the status information about the buffers; and
continuously modifying task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects.

18. The memory storage device of claim 17, wherein the interface is a network interface.

19. The memory storage device of claim 18, further comprising instructions for:
providing the user with an interface for providing to the user task prioritization for any task of the plurality of projects based on the status information about the buffers, wherein task prioritization is calculated across the plurality of projects.
20. The memory storage device of claim 19, wherein the interface for providing to the user task prioritization is a network interface.

X. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. sections 1.130, 1.131 or 1.132 of this title or any other evidence entered by the Examiner has been relied upon by Appellant in this Appeal, and thus no evidence is attached hereto.

XI. RELATED PROCEEDINGS INDEX

Since Appellant is unaware of any related appeals and interferences, no decision rendered by a court of the Board is attached hereto.